

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MD.
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
GEORGETOWN PREPARATORY SCHOOL,
INC., Applicant**

Stephen W. Gresham, AIA
Rev. William L. George, S.J.
Trini Rodriguez
Lewis Slade
James A. Soltesz, P.E.
For the Application

Anne C. Martin, Esq.
Robert H. Metz, Esq.
Attorneys for the Applicant

Application No. G-796

Ron Miller, Treasurer, Grosvenor Park II,
Homeowners Association
In support of the Application as
currently modified

Martin Klauber, Esq., Peoples'
Counsel for Montgomery County
In support of the Application
as currently modified

Laura Wilkinson, President, Tuckerman
Heights Homeowners Association
In support of the Application as
currently modified

Norman G. Knopf, Esq.
Attorney for the Association

Before: Philip J. Tierney, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Zoning Application No. G-796, filed February 5, 2002, requests reclassification from the R-90 Zone to the PD-28 Zone of 15 acres known as Part of Parcel 1, Part of the Property of Joan W. Corby and Part of Parcel C, Grosvenor Park, located in the northwest corner of the intersection of Maryland Route 355 and Tuckerman Lane, Rockville in the 4th Election District.

The Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) initially reviewed the application and, in a report dated May 3, 2002, recommended deferral or denial. The Applicant subsequently filed additional materials that caused the Staff's recommendation to be changed to approval. The Planning Board then reviewed the matter on May 9, 2002 and, after consideration of community comments, recommended a continuance to allow the Applicant to further revise the plan. The Applicant entered into lengthy negotiations with adjacent community organizations, which were mediated by the Peoples' Counsel for Montgomery County. As a result of the negotiations and mediation the Applicant's development plan was revised on several occasions and the parties eventually executed a settlement agreement.

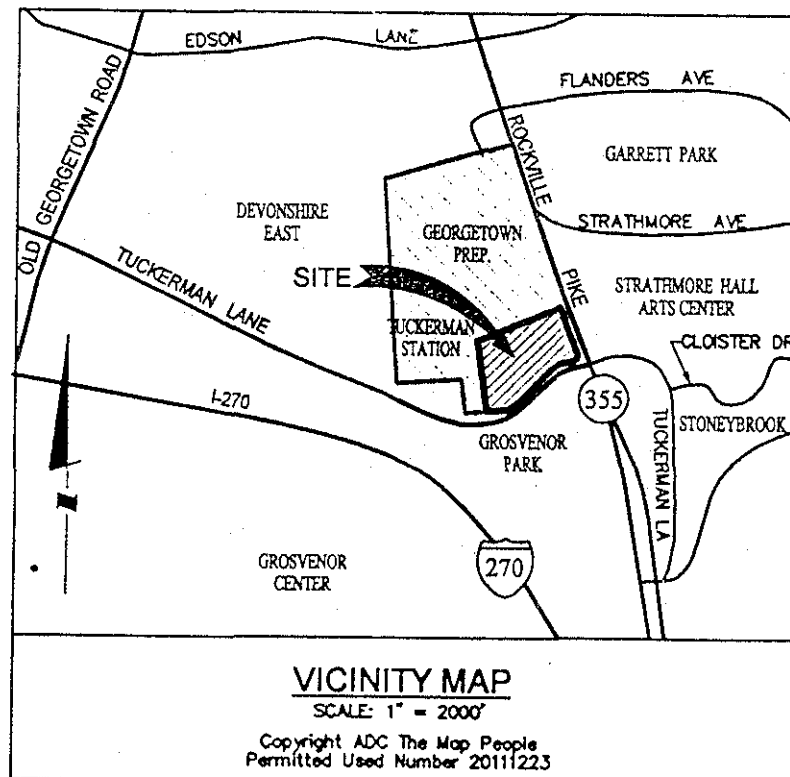
The Technical Staff reviewed the revised application and, in a report dated September 6, 2002, recommended approval. Four members of the Planning Board considered the revised application on September 12, 2002 and unanimously recommended approval. A public hearing was convened on September 13, 2002 and evidence was presented in support of the application. No one appeared in opposition to the application. The record was held open for the Applicant's submission of additional materials, the Technical Staff's comment on a request to apply only the Grosvenor traffic policy area to the proposed development and the Applicant's reply to the Staff's comments. The record closed on October 11, 2002.

II. FINDINGS OF FACT

For the convenience of the reader, the facts are grouped by subject matter. The facts are largely uncontested, but where conflicts exist they are resolved under the preponderance of evidence test.

A. Subject Property

The subject property is located in the North Bethesda-Garrett Park Planning Area. The property is also located northeast of Interstate 270, along the west side of Rockville Pike, also known as Maryland Route 355, and about 1,800 feet west of the Grosvenor Metro Station. The site is irregular in shape and constitutes a 15-acre tract at the northwest quadrant of the intersection of Rockville Pike and Tuckerman Lane. The site is a part of the larger 91-acre tract that constitutes the campus of the Georgetown Preparatory School, which is the Applicant in this case. The land was acquired by the Applicant in 1915 and it has continuously operated the school at this location since 1919. The general location and shape of the property is depicted below.



The subject property contains natural and environmental features that limit any development opportunities on the site. The eastern portion of the site contains an intermittent stream, a stream valley, steep slopes and a flood plain. This area is currently part of the School's golf course and that use is planned to continue under the proposed development. There are about 3 acres of forest conservation areas. These natural features are depicted on the Applicant's Natural Resources Inventory and Forest Stand Delineation Study, which are shown below.

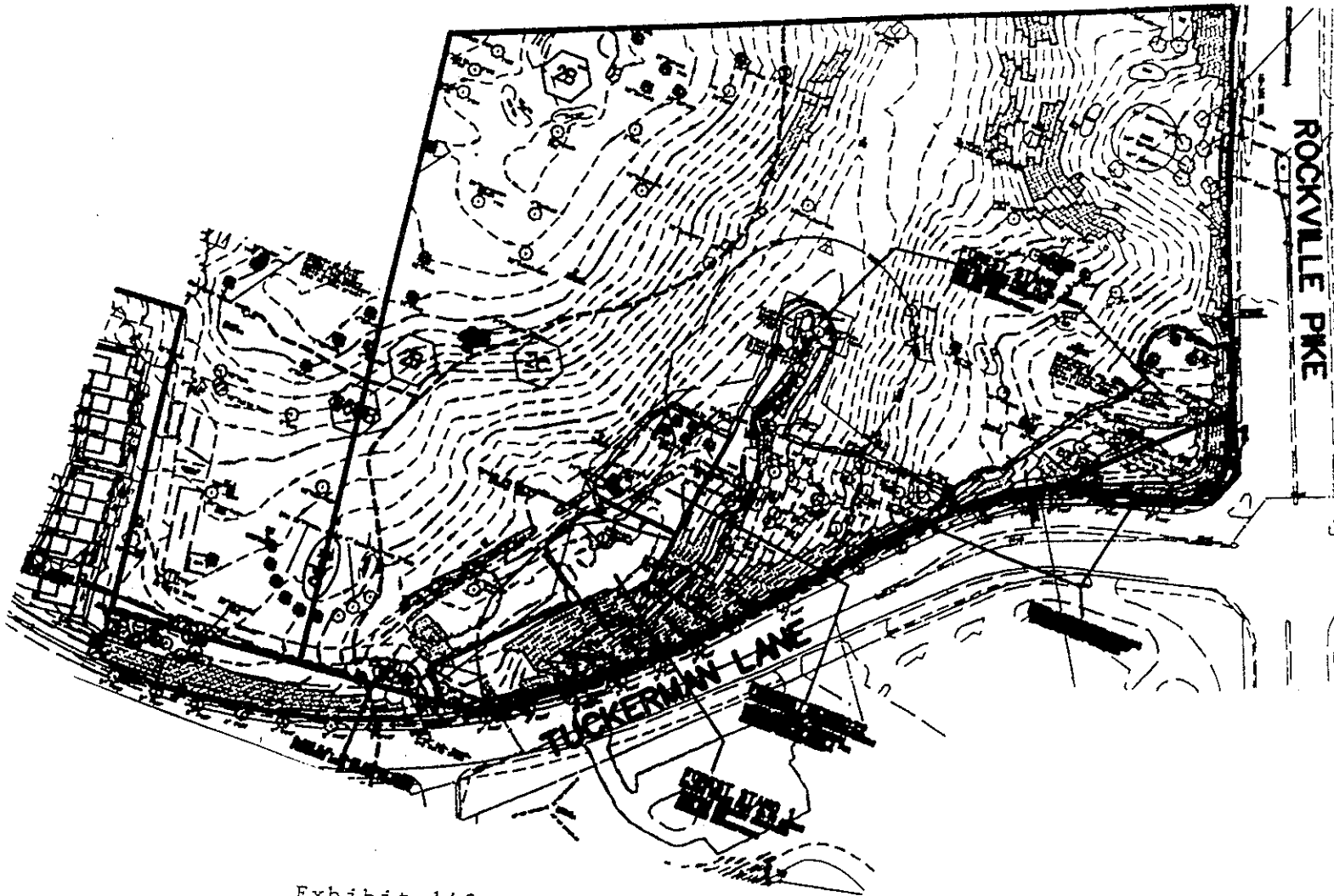


Exhibit -143

B. Planning and Zoning History

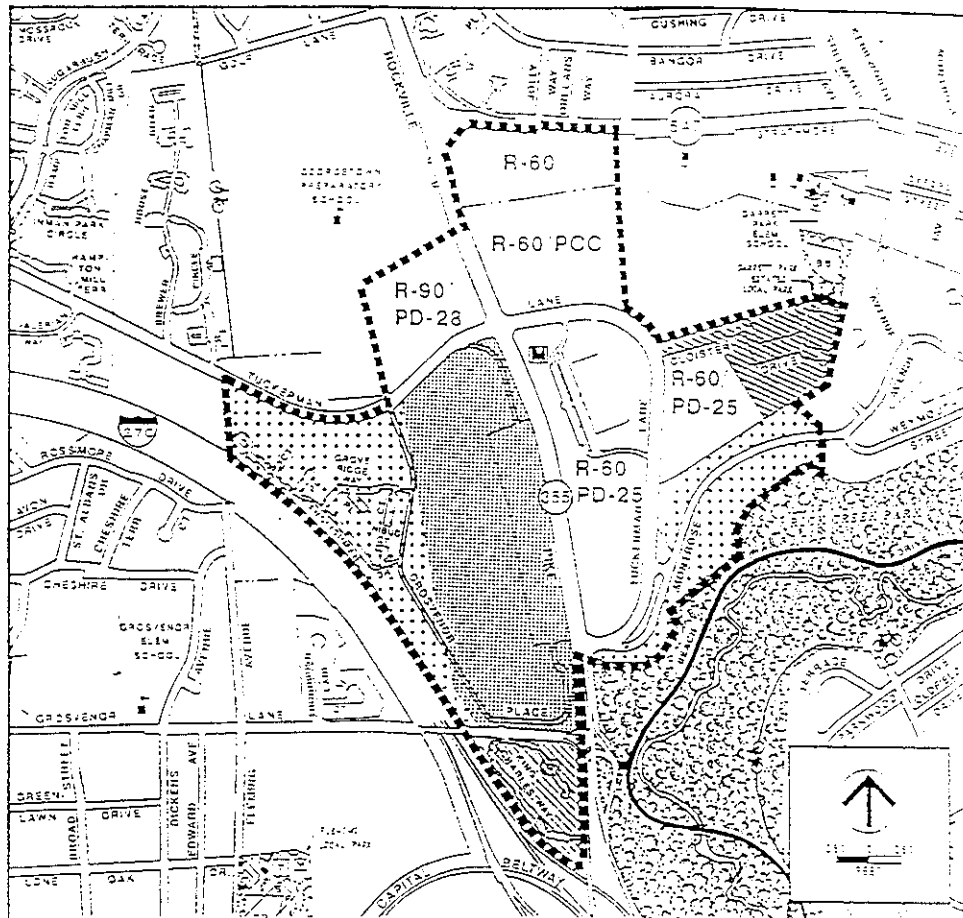
The subject property was classified under the R-90 Zone by the 1954 regional district zoning. This zoning was reconfirmed by countywide comprehensive zoning in 1958, and again in 1978 and 1993. The property was also the subject of a local map amendment (LMA) request, F-387, which sought the C-P (Commercial, Office Park) Zone, but it was withdrawn in September, 1969.

The subject property is governed by the recommendations contained in the *1992 North Bethesda-Garrett Park Master Plan*. The property lies mostly within the boundaries of the *Grosvenor Sector Plan* area and is identified as a discrete element of the Applicant's larger school tract. The retention of the school and its environmental setting are major priorities of the plan which recommends the retention of the R-90 Zone as a base zone for the property and the larger school tract, but indicates that most of the subject property is suitable for development under the PD-28 Zone subject to design guidelines. The Sector Plan's zoning recommendations are depicted on the following page.

The plan's design guidelines for development of the site under the PD-28 Zone contain four major elements:

1. Provide *convenient pedestrian access* to Metro.
2. If feasible, *provide vehicular access from Tuckerman Lane*.
3. *Restrict residential development under the PD-28 Zone...to 15 acres or less conforming to the 15 acres of the site within the Grosvenor Sector Plan boundary. The exact configuration of the 15 acres to which the PD-28 floating zone may be applied will depend on environmental, topographic, or other similar reasons.* Any deviations from the Sector Plan boundary would be expected to be minor in nature.
4. Submit a landscaping plan that *provides a buffer between the residential development and the remainder of the site*. [North Bethesda/Garrett Park Master Plan, 1992 as amended, 1994, p. 75, emphasis supplied].

The configuration of the subject property substantially follows the Sector Plan's boundaries for the PD-28 Zone. However, because of environmental and topographical concerns, the area proposed for the



GROSVENOR SECTOR PLAN AREA - PROPOSED BASE/FLOATING ZONES

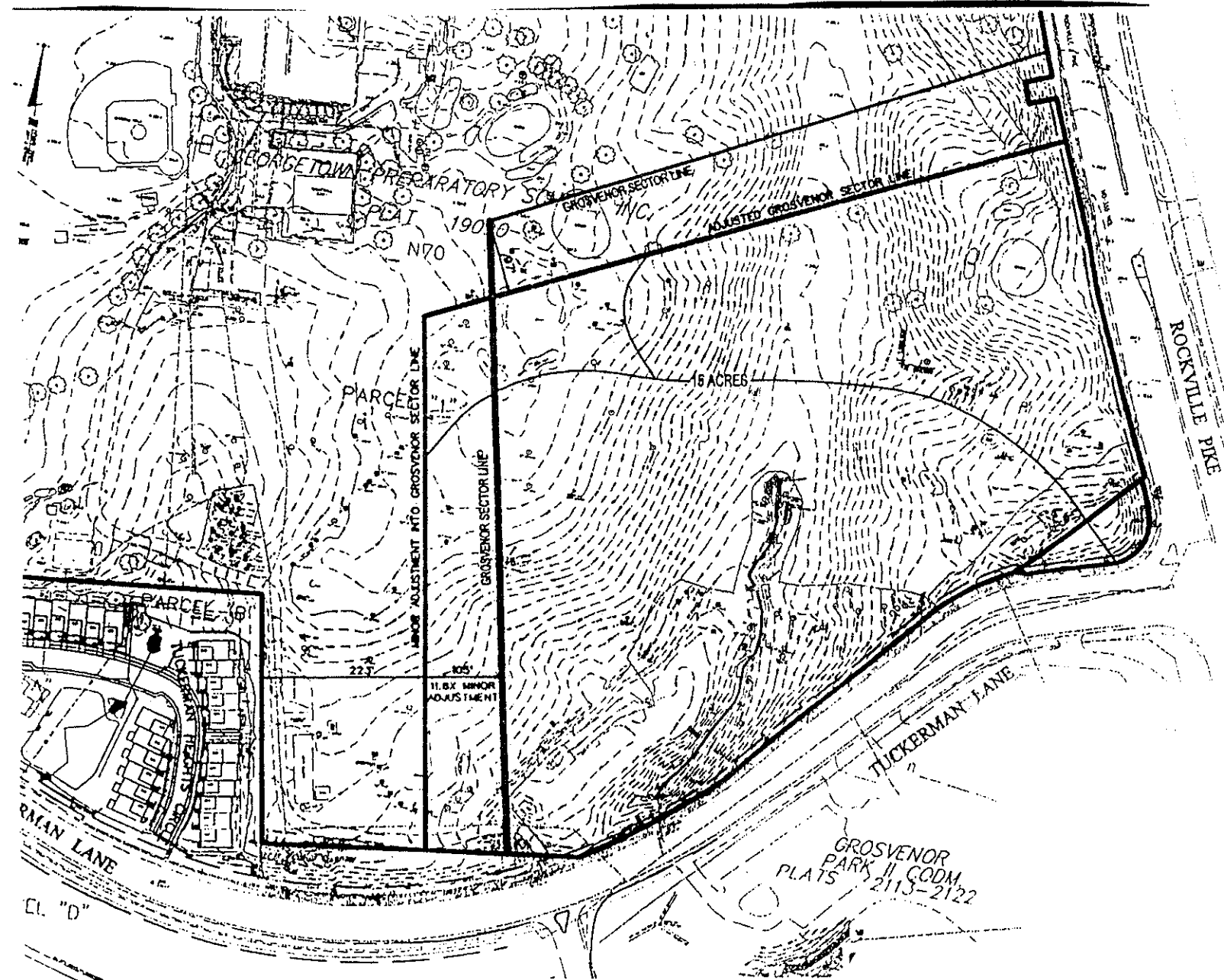
R-90 PD-28	R-90: Residential, One-Family/ PD-28 Planned Development	R-30	Multiple-Family, Low Density Residential
R-60 PCC	R-60: Residential, One Family/ PCC Planned Cultural Center	R-10	Multiple-Family, High Density Residential
R-60 PD-25	R-60: Residential, One Family/ PD-25 Transit Station, Residential	RT-12.5	Residential, Townhouse
R-60	R-60 One Family Detached Residential		

North Bethesda-Garrett Park
Planning Area

PD-28 Zone does not exactly coincide with the zoning boundaries shown on the plan. The site was reconfigured in a more rectangular shape to provide for more open space along the Rockville Pike corridor as recommended by the plan. The deviation involves an extension of the western zoning boundary further to the west and a contraction of the northern zoning boundary, but still contains 15 acres. The Technical Staff concluded that the deviation from the Sector Plan boundaries is justified and the master plan anticipates it:

"Restrict residential development under the PD-28 Zone, which is a floating zone, to 15 acres more or less conforming to the 15 acres of the site within the Grosvenor Sector Plan boundary. *The exact configuration of the 15 acres to which the PD-28 floating zone may be applied will depend on environmental, topographic, or other similar reasons. Any deviations from the Sector Plan boundary would be expected to be minor in nature.*" [Sector Plan, pp. 69-70, emphasis supplied.]

This deviation is only 11%, as is depicted on the map below, and does not undermine the objectives of the Sector Plan.



C. Surrounding Area, Land Use and Zoning Pattern

The PD-28 Zone is a floating zone and evaluation of the zoning issues requires delineation of a surrounding area. When a floating zone application is considered, the surrounding area is applied in a less rigid manner than for a Euclidean zoning neighborhood. In general, the surrounding area should take into account those uses that are most directly affected by the proposed development.

The Technical Staff defined the surrounding area as bounded on the north by Golf Lane and Strathmore Avenue; on the east by those uses fronting on the east side of Rockville Pike; on the south by Grosvenor Lane; and on the west by Interstate 270 and the Tuckerman Station development. This area generally follows the boundaries of the Grosvenor Sector Plan area¹ and is not in dispute. The Staff's area will be used in the evaluation of the application. The land use pattern of the area is depicted on the following page.

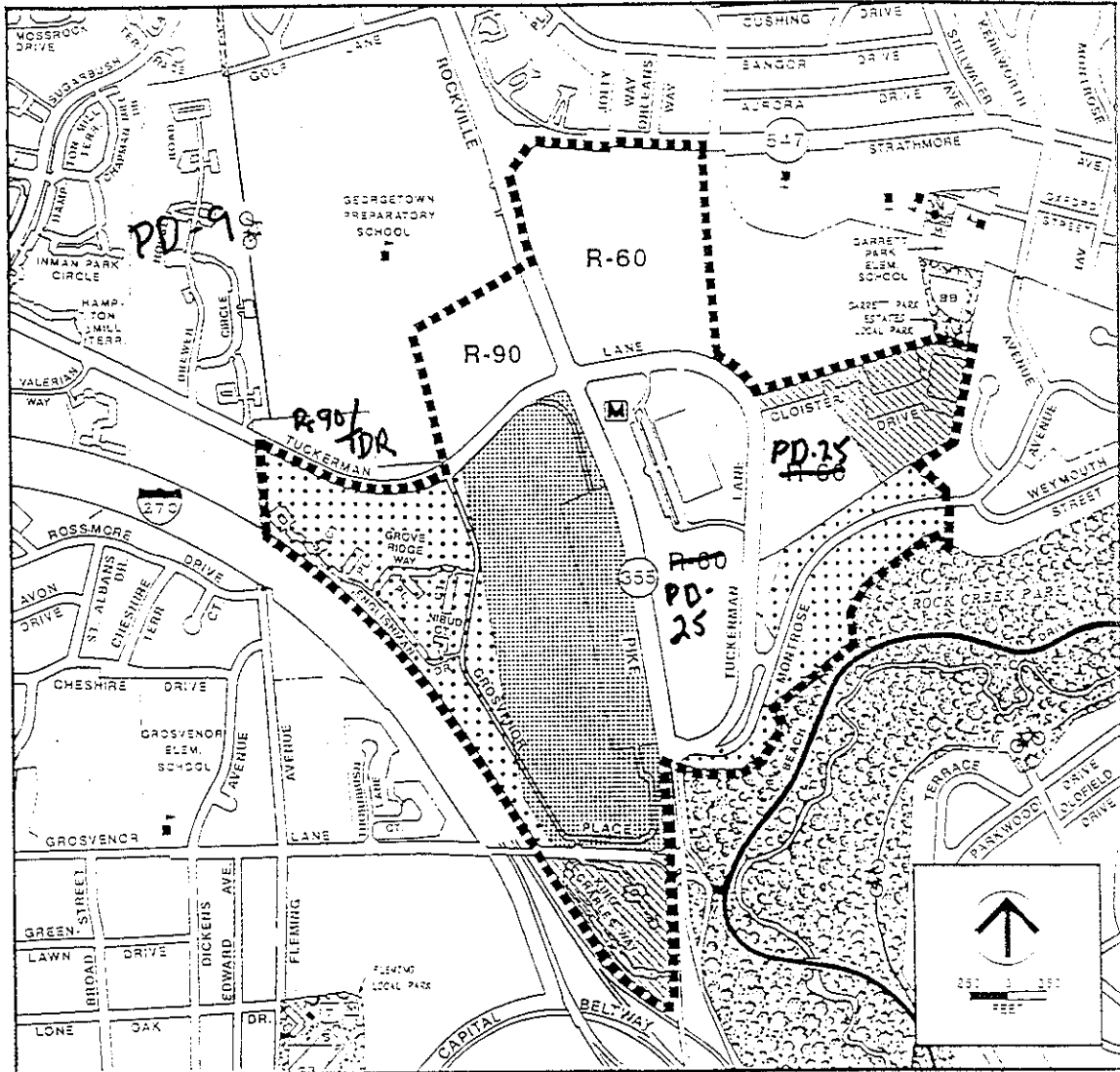
The land use and zoning pattern reflects predominately residential uses and zoning. The Applicant's school occupies a central location and is a dominant institutional use in the area. Along the east side of Rockville Pike is another institutional and special exception use, the American Speech, Language and Hearing Association building, which is classified under the R-60 Zone and is located directly across from the subject property. Also located on the east side of Rockville Pike across from the subject property is Strathmore Hall, a multipurpose art and music center also classified under the R-60 Zone. Both these properties provide substantial green space to correspond to the green buffer provided by the Applicant's school.

¹ The major area exempted from the Grosvenor Sector plan boundaries but included in the Staff's surrounding area involve the Applicant's remaining 75 acres not included in the Application, and the townhouse communities of Tuckerman Heights and Tuckerman Station. Some residential areas exempted from the Staff's surrounding area but included in the Grosvenor Sector Plan boundaries involve the community of Parkside and townhouses located south of Grosvenor Lane.



Located east of Rockville Pike and south of Tuckerman Lane is the Grosvenor Metro Station. Also along the east side of Rockville Pike adjacent to the metro station is Grosvenor Village, a residential complex of 860 dwelling units currently under construction which was approved for the PD-25 Zone in 1998 under LMA G-768. Also located to the south of Tuckerman Lane but west of Rockville Pike is the extensive Grosvenor Park complex of multi-family, high-rise and townhouse buildings, which was developed under the R-10 and R-30 Zones. The complex contains five high-rises, several of which are 22 stories in height.

Located to the west of the subject property is the Tuckerman Heights community of 37 townhouses developed under the R-90/TDR Zone. Located further west is the Tuckerman Station townhouse community which was developed under the PD-9 Zone. The zoning pattern is depicted below.



GROSVENOR SECTOR PLAN AREA - EXISTING ZONING

R-90	R-90 Residential, One-Family	RT-12.5	RT-12.5 Residential, Townhouse
R-60	R-60 Residential, One-Family		
R-30	R-30 Multiple-Family, Low-Density Residential		
R-10	R-10 Multiple-Family, High-Density Residential		

North Bethesda-Garrett Park
Planning Area

D. Proposed Development

The Applicant proposes to develop the site with 473 dwelling units within a compact building configuration that ranges in height from 2 to 9 stories. The project is to be named Inigo's Crossing, which is derived from the nickname of St. Ignatius of Loyola, the founder of the Jesuit order that operates the Applicant's school. The project involves a single building, but it gives the appearance of two distinct buildings because of its use of topography and varied heights. An underground parking garage of 3 to 4 levels will provide spaces for 750 cars. This compact form of development is intended to protect environmentally sensitive areas and preserve open space areas.

The revised development plan provides that 11% of the dwellings will be in buildings of 4 stories or less. The PD-28 Zone requires a minimum of 25% of buildings of 4 stories or less and the Applicant requests a waiver under §59-C-7.131.² The waiver appears justified because the deviation will allow a more compact form of development and thus minimize impact on existing topography, environmentally sensitive areas and open space. It also furthers the objective of the sector plan for this location. A building height chart is shown below.

INIGO'S CROSSING

(approximate number of units in each building height)

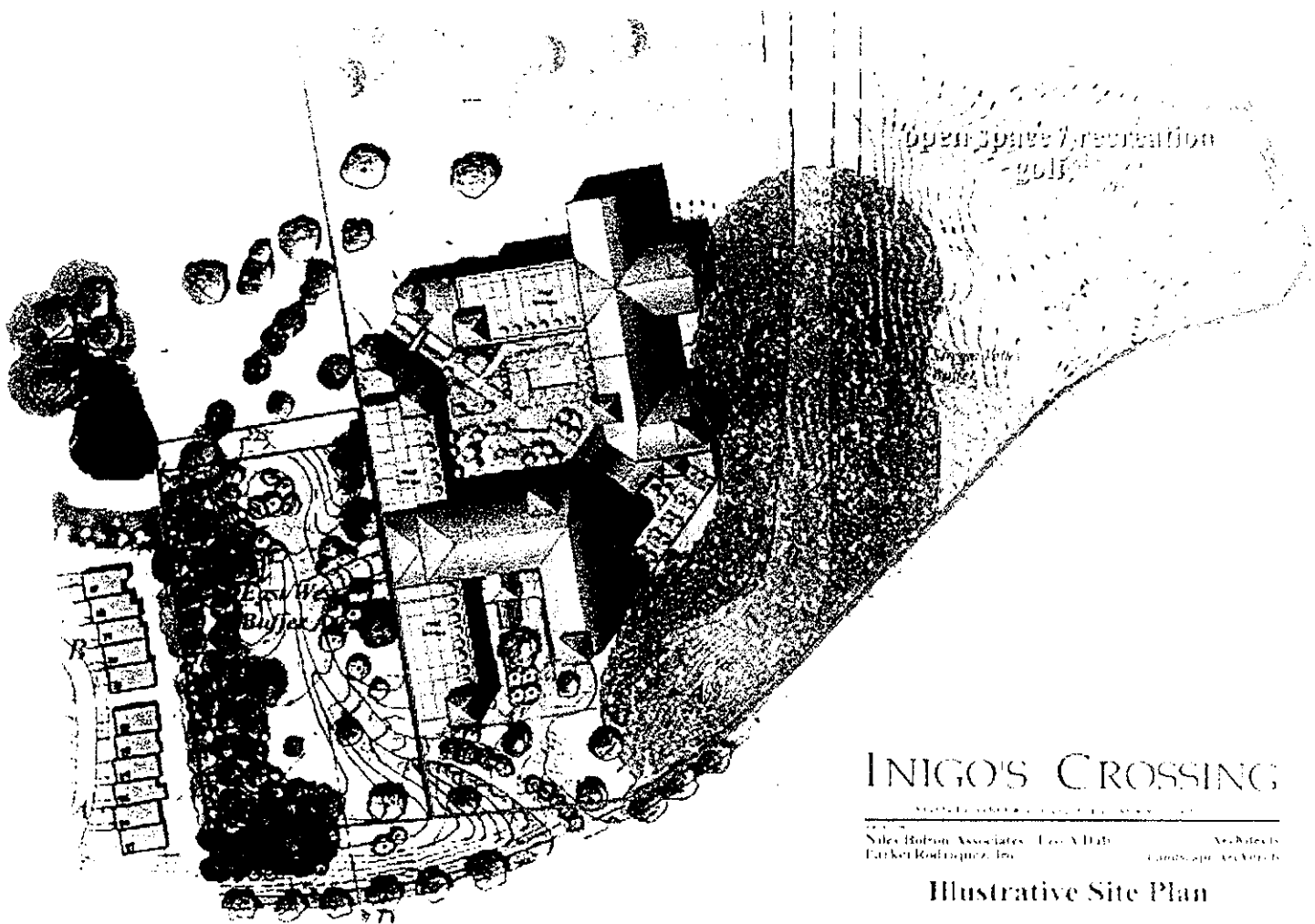
Exhibit No. 149

Because each individual unit has not been designed yet, these are only close approximations. This analysis is based on an even distribution of unit types throughout all areas of the building.

Building Height (stories)	Number of Units (approximate)	Percent of Total
2	27	5.7%
4	25	5.3%
5	38	8.0%
6	15	3.2%
7	147	31.1%
9	<u>221</u>	<u>46.7%</u>
	473	100.0%

² "The District Council may waive the percentage requirement for ...multi-family dwelling units if it finds that a proposed development (a) is more desirable for stated environmental reasons than development in accordance with these limits, or (b) achieve goals, policies or recommendations stated in an approved ... sector plan."

Amenities for future residents include courtyard areas, swimming pool, recreational areas and walkways within the complex with convenient pedestrian access to the Grosvenor Metro station². Green space comprises 78% of the area with significant open space areas located along the Rockville Pike corridor. An illustrative site plan shows the concentration of development in a compact area at the western edge of the property. The site plan is depicted below.



² There are two alternative routes to the metro station that are less than 2,000 feet. An existing route would cross Tuckerman Lane at Grosvenor Place and follow existing Grosvenor Park's sidewalks to the tunnel under Rockville Pike to the metro station. The other route would follow Tuckerman Lane to Rockville Pike and cross at the intersection to the metro station.

The Applicant will retain ownership of the property and lease it to a developer to construct the complex, which is intended to be rental apartments. The Applicant or its lessee will be responsible for the care and maintenance of all open space and facilities. It is the Applicant's intention that a portion of the project will be available as residences to the Applicant's faculty and staff and 53 of the dwelling units will be moderately priced dwelling units (MPDU) under the County's MPDU program.

The Applicant will also retain its primary function of operating an educational institution at this location and will continue to use much of the subject property for open space and recreational activities. The existing golf course will be retained on the eastern portion of the site, as will substantial tree stands. A stormwater management pond is proposed to be located in the eastern portion of the site within the intermittent stream. The site was developed before stormwater management regulations were adopted and the stormwater facility will provide a major benefit to the surrounding area in improved water quality and quantity controls. The project also includes stream valley restoration, forest conservation and reforestation.

The proposal includes an offsite amenity in the form of a 2.33 acre buffer strip that will screen the proposed development from the immediately adjacent Tuckerman Heights community. The buffer strip will include an access road and significant vegetative buffer. This buffer will include preservation of existing tree stands as well as new vegetative plantings. The access road will provide a needed secondary access for emergency vehicles to the Applicant's school campus. The buffer strip, which will remain classified under the R-90 Zone, allows the Applicant to relocate the proposed building to the west without compromising topography and open space if a waiver to the setback requirements is granted for the buffer area⁴.

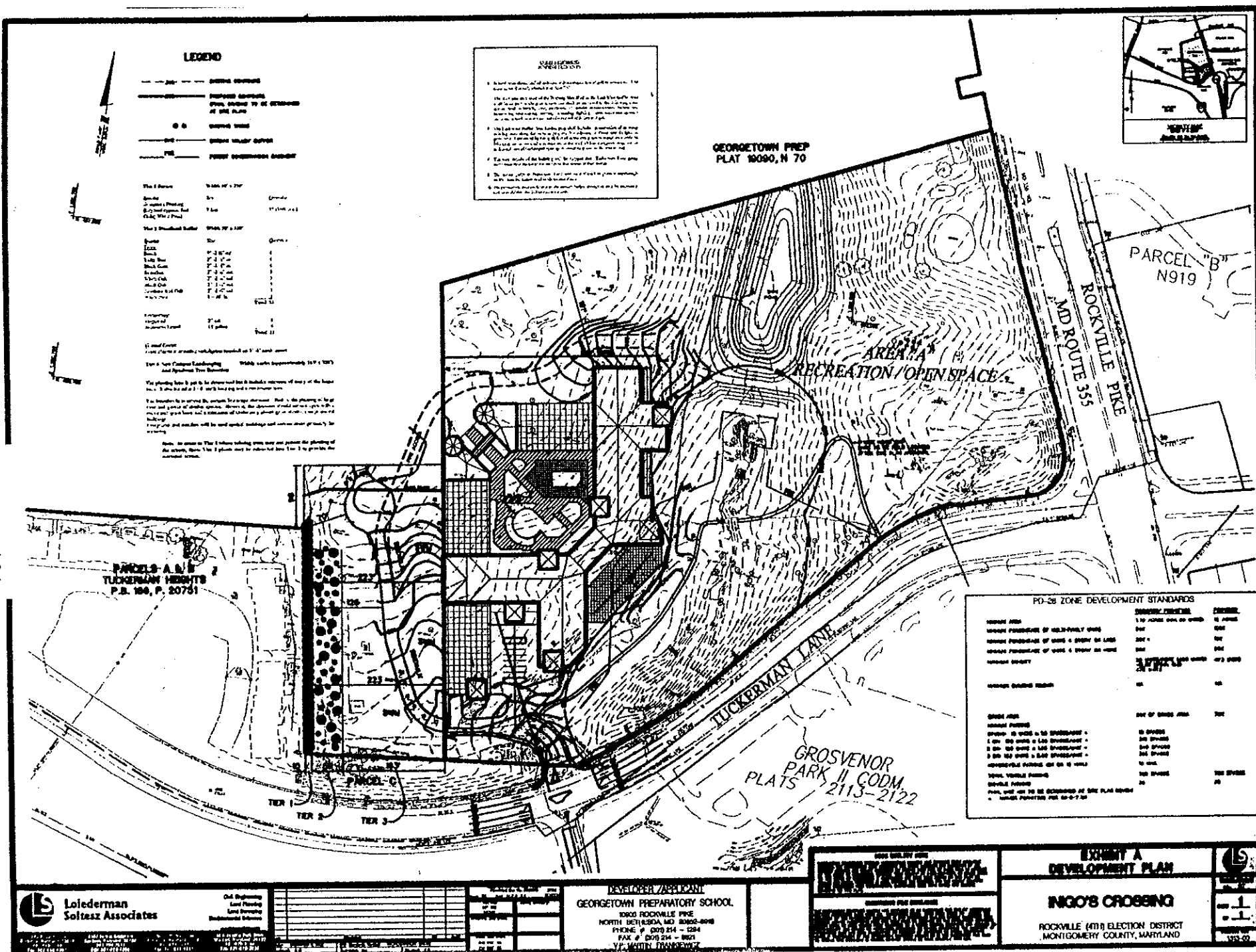
The overall development plan includes the building footprint, on site recreational amenities, vehicular and pedestrian circulation systems, the off-site buffer area, on site green space areas, an access

⁴ Section 59-C-7.15 (d) permits a waiver of the setback requirements if the Planning Board finds that the reduced setbacks are compatible with existing or proposed development in the adjoining one-family detached zone, that is, the buffer area. The Technical Staff indicated the waiver is justified based on the Applicant's binding elements for the use of the adjacent buffer area.

road to the site and the main campus, and binding elements. The binding elements and the development plan are depicted below and on page 15.

INIGO'S CROSSING
BINDING ELEMENTS

1. School recreational and educational activities/open space/ golf to remain on 11.66 acres of the Property identified as Area "A".
2. The 2.33 acre area west of the Property identified as the East-West Buffer Area shall be subject to site plan review and shall be restricted to the following uses: access road, sidewalk, gate, gatehouse or similar access-control feature and turnaround, landscaping, berming, screening, lighting, storm water management facilities, school recreational and educational activities and golf.
3. The East-West Buffer Area landscaping shall include: preservation of as many existing trees along the western property line adjacent to Tuckerman Heights as possible and enhanced by ten (10) feet of dense evergreen planting; an additional fifty (50) feet of wooded area adjacent to the ten (10) foot evergreen strip; and an additional area of landscaped open space continuing east to the access road.
4. The west façade of the building will be stepped from Tuckerman Lane going north from four stories to six stories to five stories to four stories.
5. The access point at Tuckerman Lane will be designed to prevent cut-through traffic from the access road to Grosvenor Place.
6. No permanent encroachment in the stream buffer, except as may be necessary and unavoidable for infrastructure needs.



E. Public Facilities

The relevant public facilities include schools, water and sewer, storm water management and environmental issues, and area roads and transit. The impact of the proposed development on public facilities is evaluated at both the zoning and subdivision stages. The zoning evaluation is particularly important because of the discretionary nature of the process and the need for a more comprehensive review than available at the subdivision stage. The zoning review determines whether or not the proposed development will have an adverse impact on public facilities and, if so, whether or not the impact will be adequately mitigated by the Applicant by improvements reasonable probable of fruition in the foreseeable future.

1. Schools

The proposed development is expected to generate about 15 elementary students, 9 middle school students and 7 high school students. The schools serving the subject property are in the Walter Johnson cluster with assignments to Garrett Park Elementary School, Tilden Middle School and Walter Johnson High School. Evidence indicates that Montgomery County Public Schools considers that adequate school capacity exists in the cluster to accommodate the proposed development.

2. Water and Sewer

The property is classified under water service category W-1, which indicates that water service is immediately available to the site. The Technical Staff reported that local water service is deemed to be adequate and the proposed development will not have adverse impact on existing water facilities.

The property is also classified under sewer service category S-1, which indicates that sewer service is immediately available. The Technical Staff reported that local sewer service is deemed adequate and the impact of the proposed development will be negligible. The Applicant also submitted evidence to show that the proposed development can be adequately accommodated by existing water and sewerage systems.

3. Stormwater and Environmental Issues

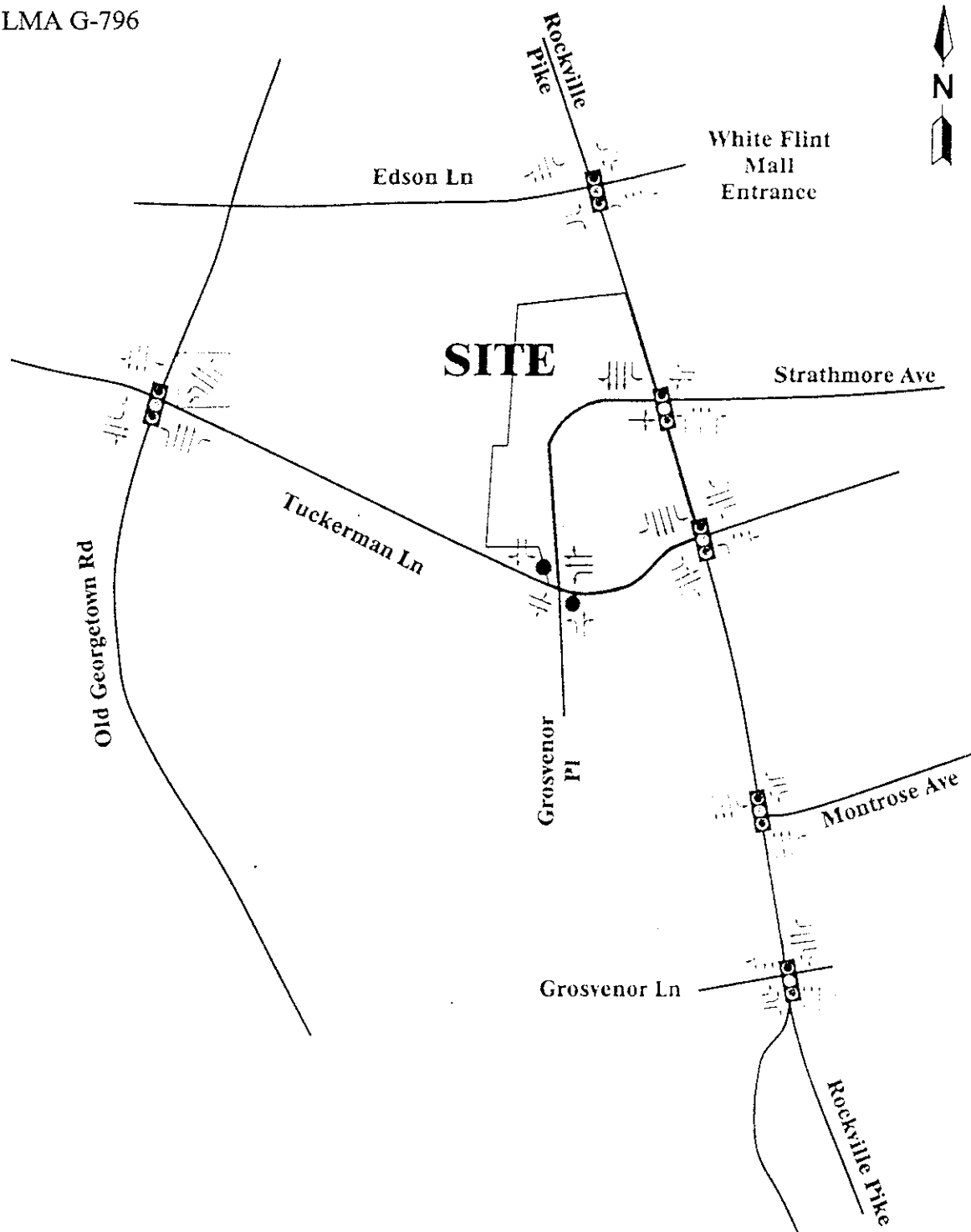
The subject property drains into the Luxmanor Branch sub-watershed of the lower Rock Creek Watershed. This area is designated as a *Watershed Restoration Area* because of its poor stream conditions and fair habitat conditions. The *Countywide Stream Protection Strategy* recommends a comprehensive examination to address storm water retrofit, stream restoration and habitat improvement opportunities.

The Applicant's campus was developed before the adoption of stormwater management regulations and hence does not have a stormwater management system in place. However, the proposed development will include a stormwater management system that will provide a significant enhancement with water quality and quantity controls, which will reduce area stormwater runoff and stream bank erosion with benefits to the region.

4. Area Roads and Transit

The area road network is anchored by Rockville Pike, which is a six-lane divided road within a 120-foot right-of-way as it passes the subject property. The traffic study area adopted by the Technical Staff included seven intersections: Rockville Pike and Edson Lane, Rockville Pike and Strathmore Avenue/Applicant's Main Access Road, Rockville Pike and Tuckerman Lane (North and South), Rockville Pike and Grosvenor Place, Tuckerman Lane and Old Georgetown Road, and Tuckerman Lane and Grosvenor Place/Proposed Site Access Road. The study area boundaries and future intersection configurations are depicted on the following page.

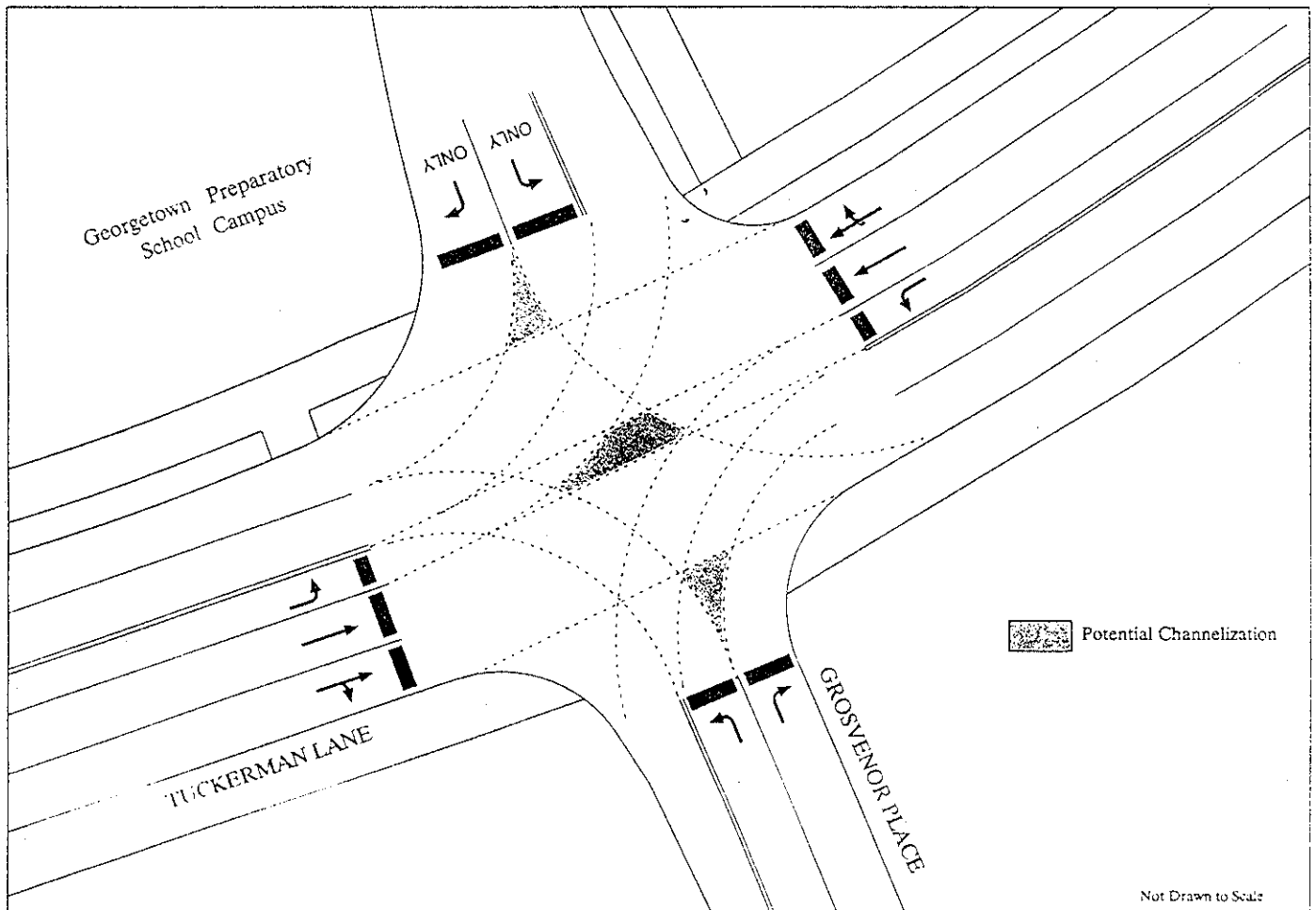
The Applicant's traffic study was evaluated by MNCPPC's Transportation Staff which concluded that all intersections except Tuckerman Lane and Old Georgetown Road will operate at acceptable levels of service when the impact of the proposed development is added to existing traffic counts and background traffic projections. Improvements are currently being made to this intersection that will improve its capacity although not to levels that will provide acceptable levels of service when all background development is



completed. Consequently, the Applicant proposed traffic mitigation that includes the construction of additional bus shelters along Tuckerman Lane, the development of a transportation demand management program, and intersection improvements. The additional bus shelters will encourage use of public transit

instead of the private car. This mitigation is deemed adequate by the transportation staff⁵, and will offset any impact from the proposed development beyond background traffic levels.

Access to the project will use an existing driveway from Tuckerman Lane that is located 1,200 feet from Rockville Pike and aligns with Grosvenor Place to the south. Grosvenor Place is a private road providing access to the Grosvenor Park multi-family complex. The access road to the site will be widened to 35 feet to provide for right and left hand turns in and out. The Applicant proposes channelization to insure that Grosvenor Place is not used for through traffic movements to and from the proposed development. The channelization plan is shown below.



⁵ The State Highway Administration also found the proposed mitigation adequate. Ex. 144.

The Applicant requests the District Council to apply only the Grosvenor Policy Area of the Annual Growth Policy (AGP) to the subject property so it would govern the proposed development. The Technical Staff applied two policy areas, the Grosvenor Policy Area and the North Bethesda Policy Area, to the property. The Grosvenor Policy Area has a positive residential capacity of 540 units while the North Bethesda Policy area reflects a negative residential capacity that makes proposed development dependant on future capacity being created.

The Applicant contends that the master plan intended for the proposed development to be included within the *Grosvenor Sector Plan* boundaries and deferred to the local map amendment stage a determination about the best manner of applying the PD-28 Zone given topographical and environmental considerations. See, discussion of the issue on pages 5-7 of the report. The 2001-3 AGP acknowledges that the boundaries for the Grosvenor Policy Area are intended to coincide with the boundaries for the *Grosvenor Sector Plan*.

The Applicant contends that the 11% deviation from the zoning boundaries of the Sector Plan was for purposes of dealing with the topographic and environmental constraints of the property and is within the intended flexibility to be accorded the location of this floating zone as specified by the Sector Plan. The Technical Staff filed written opposition to the Applicant's contention. The Staff contends that the application of policy area boundaries is a matter for the Planning Board to consider at the subdivision stage and the determination of applicable policy areas is a function of subdivision review.

There is considerable logic to the Applicant's position. If the boundaries of the proposed development and *Grosvenor Sector Plan* are intended to be co-terminus as suggested by the master plan and Grosvenor Policy Area is co-terminus with the Sector Plan, then the Grosvenor Policy Area requirements should apply to the development of the subject property. However, there are serious problems that arise if

this determination is shifted to the forum of a piecemeal zoning review. The MNCPPC's Transportation Staff has provided an extensive list of conditions that attach to the proposed development. Any action at the zoning stage to revise policy area boundaries may have an unintended impact on proposed traffic mitigation measures proposed by the staff. It would also establish a bad precedent that would encourage zoning applicants to seek changes to the AGP through a piecemeal zoning process that lacks the comprehensive evaluation of traffic issues considered during the AGP. A better approach is to allow this request to be made at the subdivision stage where all the consequences of the Applicant's request can be thoroughly evaluated. An alternative would be a remand so that all interested parties can evaluate the consequences on the record.

III. SUMMARY OF TESTIMONY

The testimony is grouped according to the Applicant's case in chief and community representatives in support. No one appeared in opposition to the application.

A. Applicant's Case in Chief

William L. George, S.J., is President of Georgetown Preparatory School, Inc. He testified about the history of the school, the acquisition of the 91-acre tract in 1915 and the relocation of the school to this site in 1919. The school has operated continuously at this location since 1919. Its current enrollment is 450 students. About 110 of its employees are residents of Montgomery County.

Father George indicated that a plan for campus development was undertaken in 2001 and identified several areas for improvement. The future stability of the school is keyed to the development of the subject property as recommended by the master plan. The objective is to keep a good faculty and provide funds for scholarships for the poor.

Father George stated that he met with various civic associations about the application in an attempt to identify areas where the proposed development could be revised to address community concerns. He met

with all neighborhoods in the vicinity and was impressed with the cordial response he received about the school's operation and its value to the larger community. The Applicant intends to retain ownership of the subject property and has included an MPDU element in the proposal in the hope that some of the Applicant's employees may be able to secure housing on the site.

Stephen W. Gresham, AIA, qualified as an expert witness in the field of architecture. He evaluated the constraints of the subject property that include a flood plain, a flood plain buffer, forest conservation areas and steep slopes. Despite these constraints, he concluded that the proposed development meets a number of desirable objectives for this location. The property is within a transit service residential district and provides public benefits from its location within 2,000 feet of the metro station. The proposal retains the open space character of the Georgetown Prep Campus and confines the new development to a small portion of the tract. The underground parking feature of the proposal insures retention of green space along Rockville Pike, which is a vital component of the project. The vehicular access is limited to Tuckerman Lane.

Mr. Gresham addressed concerns of neighbors. For example, the residents of Grosvenor want to retain their open space views of the Georgetown Prep Campus. They are also concerned about the potential for increased traffic along Grosvenor Place. The residents of Tuckerman Heights are concerned about impact on their development and require adequate screening and buffer space. The fire marshal indicated a need for a second point of access to the school for emergency vehicles. As a result of these concerns, the Applicant met with neighbors and studied some 60 different plans. The mid-rise building was selected to avoid encroachment on environmental areas and to avoid extensive surface parking connected to low-rise buildings. The development plan contains a varied heights ranging from 2 to 9 stories. The plan includes a number of amenities.

Mr. Gresham concluded that the development plan would be compatible with the surrounding area. The proposed residential use is consistent with the predominant residential use in the area. The scale of the proposed development, which will only consume about a third of the site, provides a nice transition between the Grosvenor hi-rises and the low-rise townhouses to the west. The access road is aligned with Grosvenor Place. The building style, materials and use of topography will minimize any potential adverse impact on neighboring properties.

Mr. Gresham concluded that the proposed development conforms to the requirements of the PD-28 Zone. The proposed development meets the purposes of the zone and will provide a unified development that conforms with the use and density recommendations of the master plan. It constitutes a unique development that exceeds normal zoning. The proposed development fits into the ground and saves trees. The project also improves traffic along Tuckerman Lane and provides better access to metro because of the new traffic light at the proposed access point.

Mr. Gresham finally concluded that the proposed development is consistent with the recommendations of the sector plan. In addition to consistency with the use and density recommendations, the project provides a variety of amenities and keeps substantial open space on the site.

Trini Rodriquez qualified as an expert witness in the fields of landscape architecture and land planning. She is familiar with this area of the County having work on projects at White Flint and Grosvenor Village. She submitted an extensive land use and planning report and provided testimony in support of her conclusions about the proposed development.

Ms. Rodriquez concluded that the proposed development conforms with the recommendations of the master plan, more specifically, the recommendations of the *Grosvenor Sector Plan*. The project will provide 473 dwelling units located within easy walking distance of the metro station and within the area specified by the plan for PD-28 zoning, thus meeting the objective for a transit serviceable residential

district that is compatible with adjacent development. The project will also be located in a manner so as to protect open space vistas along Rockville Pike, environmental areas and minimize any adverse impact on topography. The proposal will permit the Applicant to continue to maintain its main institutional use and unique open space areas. The revised development plan reflects a compact form of development that will provide convenient access to metro, improve vehicular access by way of enhanced signalization along Tuckerman Lane, provide for zoning boundaries within a 15-acre envelope that protects environmental, topographic and other natural features of the site, and provides buffer areas for the remainder of the site and adjacent uses. A 2.33 acre buffer area adjacent to the Tuckerman Heights community will provide a three tier approach where the first 10 feet will provide evergreen screening, the next 50 feet will provide more natural vegetation and a third tier that will provide for preservation of existing trees and supplemental plantings.

Ms. Rodriquez concluded that the proposed development satisfies all the requirements for the PD-28 Zone. The project satisfies the purpose of the zone as well as the recommendations of the sector plan and provides for a creative design to preserve open space, environmental areas and natural topography. While the project proposes a broad range of multi-family housing there is need for a waiver from the 25% requirement for units 4 stories and lower in order to provide a more compact form of development that will be protect open space, environmental areas and natural topography.

Ms. Rodriquez addressed the amenities of the project, which include a clubhouse and exercise areas associated with a swimming pool. A series of courtyards will provide for passive recreation and provide for visual relief from building mass. A meandering access road, sidewalks and street trees will link the project to the pedestrian system leading to metro. The project also includes stream valley restoration, forest conservation and reforestation. About 78% of the site will be devoted to open space and preservation of environmental and topographic features.

Ms. Rodriguez concluded that the proposal satisfies the development standards of the PD-28 Zone. The proposal meets the master plan density and locational requirements of § 59-C-7.121. It also meets the minimum areas requirement because it exceeds 50 dwelling units. The proposal substantially exceeds the 50% green area requirement. With a waiver of minimum percentage of units 4 stories or less, it will meet the density requirements. Parking for 750 cars exceeds the minimum required of 739 spaces.

Ms. Rodriguez concluded that the development plan meets the requirements of § 59-D-1.61. The plan complies with the use and density requirements of the master plan and does not conflict with the general plan or the County CIP or other county plans or policies. The plan meets all the requirements of the PD-28 Zone. The proposed internal vehicular and pedestrian circulation systems and access points are safe, adequate and efficient. The building layout and underground parking will be incorporated into existing slopes and will minimize any disturbance to topography, soils, vegetation and other natural features of the site. The Applicant, as owner of the project, will be ultimately responsible for the perpetual maintenance of areas intended for recreational or quasi-public purposes.

Ms. Rodriguez finally concluded that the proposed development would be compatible with other uses within the surrounding area. The land use and careful development standards to be applied will insure that neighboring properties will be protected against any adverse impact from the project. She indicated that a waiver from the 100-foot setback requirement, § 59-C-7.15 (d), may be granted by the Planning Board at site plan if it is found that reduced setbacks are compatible. Here, the adjacent buffer area is the only area impacted by the reduced setbacks and its purpose is to provide enhanced compatibility to the Tuckerman Heights community.

James A. Soltesz, P.E., qualified as an expert witness in the field of civil engineering. He described natural features of the site and indicated that development of the site would not cause soil erosion or damage to natural features of the site. The development will have little impact on natural features because of the

large green area and the use of topography that will minimize grading. The project includes stream valley buffers and tree preservation areas. A major water quality improvement will result from the installation of a stormwater management facility. He considers this improvement to be a major public benefit because of the need for better controls in this area of the county.

Lewis Slade qualified as an expert witness in the field of traffic engineering. He conducted a traffic study of the area road network based on study limitations provided by the Technical Staff. He examined 7 intersections and applied background traffic from approved but unbuilt projects identified by the staff. He applied a 20% discount for traffic based on the high incidence of metro ridership in this area. Only one intersection did not reflect satisfactory levels of service and that intersection is at Old Georgetown Road and Tuckerman Lane. Even when current improvements are made to the intersection, it will not operate at acceptable levels of service when background traffic levels are considered. However, he identified some mitigation that will offset the impact of the proposed development. The Technical Staff and the State Highway Administration deemed the mitigation to be adequate. He concluded that the proposed development would pass an adequate public facility review.

Mr. Slade also indicated that a warrant study justifies a traffic light at the intersection of Tuckerman Lane and Grosvenor Place/Site Access Road, which will alleviate the impact from the proposed development. He submitted a channelization plan that would eliminate potential for cut-through traffic from the proposed development into and out of the Grosvenor project. He concluded that the proposed internal vehicular and pedestrian circulation system and site access are safe, adequate and efficient.

B. Community Representatives in Support

Laura Wilkinson testified on behalf of the Tuckerman Heights Homeowners Association. She expressed support for the project and indicated that the development plan has been modified to satisfy the concerns of her community. She indicated that there were tough negotiations and her community initially

opposed the project before the Planning Board. The Board was concerned that the earlier proposal was not in conformity with the master plan. She noted that the People's Counsel played a significant role in the mediation of the dispute and helped the parties reach a settlement agreement that requires a buffer area.

Ron Miller is Treasurer of the Grosvenor Park II Homeowners Association. He indicated that his community had concerns about compatibility and cut-through traffic. The revised development plan has now addressed the community concerns and he is in support of the project as modified.

IV. ZONING ISSUES

The PD zones are a special variety of floating zone and integrate performance specifications into the requirements of the zone. These zones afford the successful applicant considerable design flexibility if the performance standards are satisfied. In other words, the Applicant is not bound to comply with rigid design specifications and may propose site-specific specifications where setbacks, building heights and types of buildings may vary depending on site conditions. This is exactly how the proposed development evolved to its present state.

The flexibility of design, however, must be linked to a development plan to ensure that the District Council maintains appropriate zoning oversight. The development plan, if approved, provides the design specification for the site in the same manner as the Zoning Ordinance provides design specifications for more rigidly applied zones. For this reason, the evaluation of the zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. Performance Specifications

The District Council must evaluate the development plan under five specific areas set forth in Section 59-D-1.61 of the Zoning Ordinance.

1. Compliance with the Master Plan and Other Plans and Policies

The PD-28 Zone establishes consistency with the master plan as an important element and, lacking consistency with the density recommendations of the master plan, the PD Zone can only be approved by an extraordinary 6-vote majority of the District Council. *See*, § 59-D-1.62. Both the Technical Staff analysis and the testimony of Ms. Rodriguez and Mr. Gresham establish that the revised development plan conforms to the land use and density recommendations of the master plan. The development plan also conforms to the environmental recommendations for preserving open space and natural features of the site.

The PD zones also require that the application be consistent with the other County plans and policies. These requirements ensure that any development must be consistent with the approved CIP and the County's AGP. The Applicant submitted evidence that traffic mitigation will be provided so that the impact of the proposed development will not exceed background traffic levels and that other conditions of subdivision approval as specified by the Technical Staff's Transportation Division would be satisfied. The evidence indicates that the proposed development is in accord with the County's policies.

2. Zoning Requirements, Residential Enhancement, and Compatibility

The revised development plan provides for a form of development that satisfies the requirements of the PD-28 Zone as will be evaluated in more detail later in this report. The plan also provides for the maximum safety, convenience and amenities for residents of the development as well as being compatible with adjacent development.

The development plan contains features that protect environmentally sensitive areas and retains 78% of the site as green area. The development plan contains substantial setbacks to the north, east and south and provides a 2.33 acre offsite buffer area to the west. These restrictions provide nearby residential communities with greater protection than would be available under current zoning.

The proposed development provides many features that ensure residential enhancement and compatibility. The design layout provides for significant open space, tree preservation, setbacks, buffer areas, separate vehicular and pedestrian circulation systems and a storm water management system that will introduce enhanced water quality and quantity controls. These features extend benefits to future residents of the development and their neighbors.

3. Vehicular and Pedestrian Circulation Systems

The testimony of Mr. Slade and Ms. Rodriguez, as well as the Technical Staff analysis, provide cumulative evidence to show that the separate vehicular and pedestrian circulation systems will be safe, adequate and efficient. The internal access road is designed to encourage safe and efficient distribution of traffic within the residential area and also provide a gated secondary access to the Applicant's main campus for emergency vehicles.

The pedestrian circulation system is designed to channel pedestrians through the site to sidewalks along Tuckerman Lane and convenient access to the nearby metro station. The Applicant will also provide additional bus shelters along Tuckerman Lane to encourage use of public transit. The Applicant will also provide mitigation to the intersection of Old Georgetown Road and Tuckerman Lane and satisfy other conditions of subdivision approval specified by the Technical Staff's Transportation Division.

The Applicant presented sufficient evidence to meet this performance standard and it will be evaluated again at the site plan stage.

4. Prevention of Soil Erosion and Preservation of Natural Features of the Site

The site design will preserve a significant amount of trees on the site and provide reforestation and additional vegetative planting. The plan also limits ground disturbance so as to minimize grading and take full advantage of topography in the location of dwelling units. Some 78% of the site or 11.66 acres will be

devoted to green and recreational areas. These efforts will prevent soil erosion, aid sediment control and preserve natural features.

5. Perpetual Maintenance of Recreational, Common and Quasi- Public Areas

The Applicant will retain ownership of the subject property as well as the adjacent buffer area and will be ultimately responsible for the maintenance of all recreational, common and quasi-public areas. In the event the property is leased as the Applicant intends, the lease agreement must contain safeguards to insure that perpetual maintenance of these areas is provided.

B. Requirements of the Zone

The PD-28 Zone requires evaluation of several individual specifications. These specifications are both general and technical in nature. They are evaluated below.

1. Section 59-C-7.11, The Purpose Clause

The purpose clause contains a number of goals and objectives. In order for the application to be found meritorious, the proposed development must be found proper for the comprehensive and systematic development of the County, capable of accomplishing the objectives of the PD-28 Zone, and in substantial compliance with the applicable master plan or sector plan. The testimony of Father George, Mr. Gresham, Ms. Rodriquez, Mr. Slade and Mr. Soltesz and the Technical Staff analysis provide a preponderance of evidence that the application satisfies these requirements.

The development plan provides an imaginative and compact site design with compatible land uses and specifically implements the design guidelines of the sector plan. The proposal includes significant amenities including underground parking, tree preservation, the retention of large open space areas along Rockville Pike and the introduction of storm water quality and quantity control in an area in need of such facilities. The proposal also encourages maximum social and community interaction through recreational amenities, pedestrian linkages and open space.

2. Section 59-C-7.12, Applicability

The proposed development is consistent with the master plan in terms of zoning, land use, density and open space amenities. The PD zones generally require fifty dwelling units or more and the Applicant's proposal for 473 dwelling units substantially exceeds the minimum requirement.

3. Section 59-C-7.13, Residential Land Use Standards and Restrictions

The PD-28 Zones requires that a multi-family project provide at least 25% of the units in structures that are 4 stories or less. The development has been revised to make the overall development more compact to avoid adverse impacts on environmentally sensitive areas. The revisions have caused the project the shift building heights so that only 11% of the project would be in structures that are 4 stories or less. The development plan satisfies all other standards and restriction of this section.

The Zoning Ordinance permits a waiver from the height restrictions to be granted by the District Council under §59-C-7.131 if it finds the proposed development is more desirable for environmental reasons or achieves goals, policies or recommendations of the master plan or sector plan. The evidence provides sufficient basis to justify the waiver in this case for environmental reasons and better conformity with the sector plan guidelines.

4. Section 59-C-7.14, Density

Full development of the property under the PD-28 Zone will permit 420 units without MPDUs. The Applicant is proposing 53 MPDUs for a total density of 473 dwelling units. The testimony of Ms. Rodriquez and the Technical Staff analysis indicate that the proposed density is consistent with the master plan's recommendation for this location and consistent with the zoning permitted under the PD-28 Zone.

5. Section 59-C-7.15, Compatibility

The compatibility requirements of the PD-28 Zone are both general and specific. The proposed development is generally compatible with the existing and planned land uses in the area. The evidence

provides sufficient basis to conclude that the general requirements are satisfied. In terms of land use, density and bulk, the proposed development will be compatible with its neighbors.

A specific compatibility requirement addresses housing other than single-family detached units and imposes a 100-foot building setback requirement and height restrictions for locations outside a transit development area and adjacent to land for which the master plan recommends a one family detached zone. The subject property is located adjacent to land recommended for and classified under the R-90 Zone. However, this land is owned by the Applicant and represents the location for the binding open space buffer area. Consequently, the Applicant is eligible for a waiver provision at the site plan stage and there is sufficient evidence to conclude that the waiver is likely to be granted. With the waiver, the proposed development meets the compatibility requirements of the PD-28 Zone. The Planning Board will examine this issue again at the site plan stage.

6. Section 59-C-7.16, Green Area

The PD-28 Zone requires green area of at least 50% of gross area. In this case, the Applicant proposes 11.66 acres as open space. About 78% of the gross area will be devoted to green area, which substantially exceeds this requirement.

7. Section 59-C-7.18, Parking Facilities

The development plan proposes a total of 750 parking spaces. Most of these spaces will be contained in an underground garage. The minimum parking requirement for a development of this size is 730 spaces. The proposed parking exceeds this requirement.

V. CONCLUSIONS

After a thorough review of the entire record, I make the following conclusions:

A. Development Plan

1. The requested reclassification to the PD-28 Zone specifically complies with the recommendations of the *North Bethesda-Garrett Park Master Plan* and the *Grosvenor Sector Plan* and does not conflict with the general plan, the County CIP or other County plans or policies;
2. The development plan complies with the purposes, standards and regulations of the PD-28 Zone, and provides for the maximum safety, convenience, and amenities of the residents of the development, and will be compatible with adjacent development;
3. The development plan proposes vehicular and pedestrian circulation systems that are safe, adequate and efficient;
4. The development plan provides a site design that will prevent soil erosion and preserve natural features of the site; and
5. The subject property will be under the sole ownership of the Applicant who will be responsible for assuring perpetual maintenance and care for recreational, common and quasi-public areas.

B. Zoning Request

The PD-28 Zone at the proposed location satisfies the zoning requirements in the following manner:

1. The proposed development is a proper use for the comprehensive and systematic development of the County;
2. The proposed development is capable of accomplishing the purposes of the PD-28 Zone;
3. The proposed development is in substantial compliance with the applicable master plan and sector plan; and
4. The proposed development satisfies all the technical requirements of the PD-28 Zone.

VI. RECOMMENDATIONS

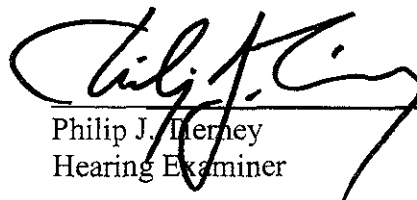
I recommend that the revised development plan, submitted as Ex. 134, be approved.

I further recommend that a waiver be granted under the provisions of §59-C-7.131 to permit less than 25% of the units in structures of 4 stories or less.

I finally recommend that Zoning Application No. G-796 for the reclassification from the R-90 Zone to the PD-28 Zone of 15 acres known as Part of Parcel 1, Part of the Property of Joan W. Corby and Part of Parcel C, Grosvenor Park, located in the northwest corner of the intersection of Maryland Route 355 and Tuckerman Lane, Rockville in the 4th Election District, be granted in the amount requested subject to the specifications and requirements of the revised development plan recommended for approval above; provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicant must submit the revised development plan as a single document for certification in accordance with §59-D-1.64.

Dated: October 15, 2002

Respectfully submitted,



Philip J. Herney
Hearing Examiner